EXHIBIT 4

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

GEN-PROBE INCORPORATED, )

Plaintiff, )

vs. )No. 99cv2668 H (AJB)

VYSIS, INC., )

Defendant. )

The confidential deposition of WALTER KING, Ph.D., called as a witness for examination, taken pursuant to the Federal Rules of Civil Procedure of the United States District Courts pertaining to the taking of depositions, taken before ANDREA L. CARTER, a Notary Public within and for the County of Cook, State of Illinois, and a Certified Shorthand Reporter of said state, CSR No. 84-3722, at Suite 205, 2111 Butterfield Road, Downers Grove, Illinois, on the 18th day of April, A.D. 2001, at 9:01 a.m.

Ex. 4 Pg. 52

COPY

you, Drs. Halbert, Lawrie and Collins?

A. How many subject matters?

Q. Yes. When we get done with this inquiry, I want you to be able to tell the ladies and gentlemen of the jury absolutely everything you can remember being discussed during the course of that meeting. But what I wanted to try to do to ease it for you hopefully, if that's the case, is start with the high level subject matters.

From a high level perspective, what were the discussion topics addressed during this meeting?

A. I think that at the highest level we were looking for amplification methods that did not involve PCR amplification.

Q. Why? Why were you looking for amplification methods to begin with?

A. Well, at the time that we formed this joint venture, Gene-Trak, Vysis did not have an amplification method, a licensed amplification method. So we felt that it was important that we either seek one out or invent one or have, you know, the ability to demonstrate that we have an amplification method that was different than PCR.

amplification could have ranged from signal amplification to probe amplification as well; is that correct?

MR. BANKS: Objection as to time.

BY THE WITNESS:

A. I am not aware that anybody was working on probe amplification.

BY MR. SWINTON:

Q. Okay. So the purpose -- the general purpose of the discussion as I understand it that took place at Gene-Trak among the four doctors was to identify -- in general identify an amplification technique that would amplify low concentrations of target nucleic acids in a sample, correct?

A. Yes.

Q. And as I understand your testimony, you wanted to find a technique that was different from PCR, correct?

A. Yes.

Q. Why? Why did you want to find something that was different than PCR?

A. Well, I wasn't involved in the business development part. I think that I was asked to put

Q. Do you believe now that you invented the combination of target capture and PCR?

A. Well, the -- these drawings don't reflect that we combined it with PCR. So I guess I am kind of confused. I -- we are talking about the context of reversible target capture and the methods of detection as stated here. So I am not sure that we even talked about linking this with PCR.

Q. Fair enough. And I don't -- let me just close with it.

Is it fair to summarize that you don't believe that now or at any time in the past that you ever concluded that you invented the combination of target capture with PCR?

A. I would have to do a literature search and see whether there was any prior art. I don't really even know to this date.

Q. Independent of prior art -- I am just asking your state of mind what you thought.

Did you believe that you had come up with the idea of combining target capture with PCR at any time in the work that was associated with the '338 patent?

Ex. 4 Pg. 55

A. Not specifically with PCR, no.

Q. Did any of the other three identified inventors: Drs. Lawrie, Halbert or Collins ever indicate to you that -- at any point in time, that they ever believed that one of them had come up with the idea of combining target capture with PCR?

A. No, I don't recall.

Q. Would you take a look at Exhibit 41.

Is this a copy of a portion of a lab notebook that you maintained while you were at Amoco?

A. Yes.

Q. And the -- I assume that these are selected pages out of the lab notebook, not the entirety of the book. At least that's what it appears to me.

A. Yes.

Q. And the -- this laboratory notebook encompasses the period of time November 16, 1985 to October 24, 1986?

A. November 16th of '85 to October of '86, yes.

Q. Would this notebook have followed you or would you have taken this on the Gene-Trak or would

Q. Well, you agree you are not changing any of your prior testimony. You didn't talk about target capture and specific amplification in your meeting in 1986, correct? That's still your testimony?

A. Yes.

Q. And as I recall, you didn't have any further activity with respect to this patent application before you signed the oath in 1997, correct?

A. I didn't have any what?

Q. Did you didn't have any further involvement with respect to any of the work that related to this patent application until you signed the oath in December of 1997, correct?

A. Yes.

Q. All right. And so you didn't talk about -- you did not talk about the combination of target capture and PCR in 1986. It doesn't come up, you didn't have any other discussions about that combination before you signed the oath in December 1997, and the only specific amplification technique you are aware of in December 1997 was PCR, correct?

Ex. 4 Pg. 57

A. Specific amplification?

Q. Yes.

A. Yes.

Q. So your testimony now is in December 1997 you believed your invention encompassed as to specific amplification, the combination of target capture and PCR. Is that your testimony now?

A. It encompasses that, yes.

Q. Why isn't there any disclosure in the specification of the 338 patent that addresses PCR?

MR. BANKS: Objection, asked and answered.

MR. SWINTON: Well, I have got different questions and different answers before.

MR. BANKS: You just asked it two minutes ago.

BY MR. SWINTON:

Q. Why isn't there any disclosure in the specification of the '338 patent of PCR?

A. Well, you were asking me about line 2 to see whether it includes specific and nonspecific amplification very early on in this, and I said that my reading of it was that did it include specific amplification.

So why we didn't give an example of PCR? I don't know. We were trying -- you said from a

very high level meeting, the very high level meeting I stated that we were trying to find ways around just PCR the way it was being practiced. So PCR was already on our mind. As to why we didn't think of an example? We were trying to think of these more novel examples.

Q. Didn't there come a time as you sat in your office in December of 1997 you are reviewing the application and you read all of the examples you have that deal with nonspecific amplification, and you thought, gee, since I am going to claim the combination of target capture and PCR, why don't we include something, just something, even a passing reference to PCR in the specification. Didn't that thought ever come to mind before you signed the oath claiming that this was your application?

A. I guess not. I mean, I don't recall making -- having that thought or telling anybody.

MR. SWINTON: No further questions.

MR. BANKS: I have nothing more.

THE VIDEOGRAPHER: Going off the video record at 3:12 p.m. at the end of tape 3.

FURTHER DEPONENT SAITH NOT.

Ex. 4 Pg. 59